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Case No. 8285/167

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

GAYLE R. EKSTROM et al.

Serial No: 09/097,186

Filed: June 12, 1998

For: SYSTEM AND METHOD FOR ROUTING BOTH TOLL-FREE AND CALLER-PAID TELEPHONE CALLS TO CALL SERVICE CENTERS

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Examiner: H. Agdeppa

Group Art Unit: 2642

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REPLY BRIEF

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This Reply is in response to the Examiner's Answer mailed June 11, 2002.

I. REPLY

A. The Claims Have Been Misinterpreted

Claim 1, as set out in Section VIII.A. of Appellant's Brief, calls for a call service having at least two call service centers, an interexchange network (IXC) for handling toll-free calls directed to this service, a local exchange network (LEC) for handling caller-paid telephone calls directed to the call service and a

call routing processor in communication with the call service centers, the IXC, and the LEC. The call routing processor receives status messages from the call service centers and provides routing instructions to the IXC and LEC for respective calls received at each of the IXC and LEC directed to the call service so that the calls may then be routed from the IXC or LEC to an appropriate call service center. Thus, the various network switches receive routing instructions before sending the calls to a call service center.

The Examiner's Answer contains several statements indicating to Appellant a potential misunderstanding or misinterpretation of the claims by the Examiner. The Examiner's examples beginning on page 7 of the Examiner's Answer are directed to automatically sending a local number to a local call center: "It is old and well known for (a) call service center(s) to receive both 800, toll-free type calls, and local, caller-paid calls, an example of which are the telephone numbers for general information regarding the US Patent and Trademark Office, 800-786-9199 and 703-308-4357, the 703' number being a local number for the local northern Virginia area callers." The problem with this example, aside from the fact that not enough information has been provided by the Examiner to determine whether this system is relevant, is that the example implies that the claimed invention somehow deals with calling directly to a call service center in a call service such that the local call automatically goes to a call service center and only gets processed for routing after it arrives at the call service center. From the Examiner's example, it also appears that he may be contemplating a system with only a single call service center accessible by two

numbers. This is contrary to the claims at issue. In the pending claims, calls originating at either an LEC or IXC receive routing instructions first before being routed to a selected one of at least two cal service centers. The claims do not recite that calls simply go directly to a call service center without first receiving call routing instructions and then get moved or sent by the call service center if that call center is busy. Also, the claims recite calls directed to a call service, not a single call center, and the call service has at least two call service centers.

Another of the Examiner's statements that leads Appellant to believe the Examiner has misinterpreted the claim language is the assertion that "the call service center or call routing processor would recognize and differentiate between a locally dialed number and a toll-free number" (Examiner's Answer, page 7, lines 17-19). Again, the implication in the Examiner's statement seems to be that he believes the local, caller-paid call is directly hooked into a local call center, is then recognized as a local call and somehow gets put into a queue with toll-free calls that reach that call center, and that the local call center would somehow manage both the local and toll-free calls separately. Appellant disagrees with the Examiner's characterization of the claims as requiring differentiation between toll-free and caller-paid calls by a call processing center or that the claims somehow require the calls to directly go to the local call center and then become processed after that point. As can be seen from the language of all the claims, the claims all involve a system or method where call routing instructions are obtained by both an LEC and an IXC for routing respective calls from each of those networks directed to a **call service** prior to a call reaching

any **call service center** in the **call service**. While Appellant appreciates that the Examiner was trying to make a statement regarding potential prior art, Appellant asks that the PTO call center example be removed from consideration as prejudicially misleading and as undocumented potential prior art that Appellant cannot evaluate at this late stage of prosecution. Alternatively, Appellant requests that prosecution be reopened because, pursuant to MPEP §1208.01, the Examiner has added a new reference that changes the evidence and rationale supporting the obviousness rejection and that Appellant has not been given a fair opportunity to respond to this new reference. Should prosecution be reopened, Appellant requests that a complete description and date of this new art be provided.

B. The Examiner has failed to support a *prima facia* case of obviousness with the Crockett reference

The Examiner has admitted that the Crockett reference, with its generic description of rules-based call processing for telephone calls, only discloses an example showing a toll-free call system where a processor or switch communicates with one or more call centers (Examiner's Answer, page 4). Appellant reiterates that Crockett fails to disclose processing of local exchange carrier (caller-paid) calls and, more importantly, fails to teach or suggest any reason to handle caller-paid calls with a call routing processor or to handle both caller-paid and toll-free calls as claimed.

In response to Appellant's arguments that there is no teaching, suggestion, or motivation in Crockett to apply Crockett to caller-paid calls or combine caller-paid and toll-free networks, the Examiner has stated that he is

relying on "the knowledge generally available to one of ordinary skill in the art" to make up for this and that it "need not be expressly stated." Aside from the fact that Crockett doesn't show a local exchange carrier or suggest any need for use of the rules-based call routing for caller-paid telephone calls concurrently with toll-free calls, Appellant submits that one of ordinary skill in the art would not have thought to do so at the time of the present invention. It is well known that the functions of interexchange carriers and local exchange carriers have been handled on different pieces of equipment for many years. It is also well known that local exchange carriers and interexchange carriers not only had separate control mechanisms, but they were handled by different companies (e.g. long distance companies and local telephone service companies have been separate entities until recently). While it may appear to be more logical today to consider combining toll-free and local call management, this was not the case at the time of the present invention. Appellant would submit that the reason there is no mention in the cited art of combining handling certain types of calls from these different networks is because of this industry history.

The obviousness arguments presented in the Examiner's Answer rely on a "common sense" argument that one of ordinary skill in the art would come up with the specific features set out in the presently pending claims from Crockett alone based on common sense. Appellant submits that this is an obvious-to-try type of argument which is a legally insufficient basis for sustaining an obviousness rejection. In re Deuel, 34 USPQ 2d 1210, 1216 (Fed. Cir. 1995). The only support for this "common sense" argument provided by the Examiner is

a newly introduced and incomplete example of a PTO call center (mentioned above) which lacks any detail or date to provide sufficient basis for its relevance or availability as prior art, and an argument that caller-paid calls in combination with toll-free calls makes accessing a call center "easy and cheap." The PTO call center example has been rebutted above, and the argument that making something easy and cheap is a motivation to combine elements in Crockett lacks credibility because Crockett lacks the elements to combine. Also, the easy and cheap argument cannot be used to both create missing elements and provide a motivation to combine. Finally, why would the "easy and cheap" reasoning dictate or motivate one to arrive at the claimed solution? Appellant submits that the direct local number connection to a particular call center would probably be less complicated and less expensive than the claimed system and method for generating routing instructions for both toll-free and caller-paid calls where a separate communication must take place with a call routing processor and the local exchange network.

II. CONCLUSION

Appellant again notes that, while the claims are of differing scope, they all relate to a call routing processor that receives and responds to queries from both caller-paid calls and toll-free calls directed to a call service so that caller-paid calls receive routing instructions in the same way that toll-free calls can receive call instructions, and are thus centrally processed with the toll-free calls, prior to being sent to a call service center. The Crockett reference lacks disclosure of a call routing processor for local exchange carrier (caller-paid calls), or the

combination of centralized call routing from a call processor for caller-paid and toll-free calls. Because Crockett lacks these basic features, and because the arguments supporting the existence of these features and the teaching to combine these features rely on unsupported statements as to the state of the art and suggestions that the existence and combination of the specific elements of the pending claims are taught from some unknown source of "common sense," Appellant respectfully requests that the obviousness rejection over the pending claims be withdrawn.

Respectfully submitted,

Dated: August 12, 2002

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TRANSMITTAL LETTER			Case No. 8285/167
Serial No. 09/097,186	Filing Date June 12, 1998	Examiner H. Agdeppa	Group Art Unit 2642
Inventor(s) Gayle R. Ekstrom et al.			
Title of Invention System And Method For Routing Both Toll-Free And Caller-Paid Telephone Calls To Call Service Centers			

TO THE COMMISSIONER FOR PATENTS

Transmitted herewith is Transmittal Letter (in duplicate); Reply Brief (in triplicate).

☐ Small entity status of this application under 37 CFR § 1.27 has been established by verified statement previously submitted.

☐ A verified statement to establish small entity status under 37 CFR §§ 1.9 and 1.27 is enclosed.

☐ Petition for a _____month extension of time.

☐ No additional fee is required.

☐ The fee has been calculated as shown below:

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Total		Minus			x $9=			x $18=	
Indep.		Minus			x 42=			x $84=	
First Presentation of Multiple Dep. Claim					+$140=			+ $280=	
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☐ Please charge Deposit Account No. 23-1925 (BRINKS HOFER GILSON & LIONE) in the amount of $_____. A duplicate copy of this sheet is enclosed.

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☒ The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this communication or credit any overpayment to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

☒ I hereby petition under 37 CFR § 1.136(a) for any extension of time required to ensure that this paper is timely filed. Please charge any associated fees which have not otherwise been paid to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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